NOTICE OF APPEAL FROM A PCR DENIAL BY THE COURT OF COMMON PLEAS

THE STATE OF SOUTH CAROLINA
In Supreme Court of SC

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case #2019-CP-40-2217

The State, Respondent,

v.

Marie Assa'ad Faltas Appellant.

NOTICE OF APPEAL

Marie Assa'ad Faltas, appeals the decision of the Court, in the order dated February 1, 2023, received by counsel on February 24, 2023, where Ms. Assa'ad Faltas was denied her request for Post-Conviction Relief. Ms. Faltas through her attorney then filed motion to reconsider or for new trial, denied by the court, order received April 6, 2023. Ms. Assa'ad Faltas was represented at the hearing by Timothy L. Griffith, Attorney at Law who files this notice on behalf of the Appellant. The order herein attached and a copy of which is also forwarded to the SCCID Appellate Division.

Dated 4/6/23

Timothy L. Griffith, Esquire
2338 Mount Vernon Dr.
Sumter, SC 29154
Telephone: (803) 499-2012
Attorney for Appellant (relieved)
Will not be representing on appeal

Other Counsel of Record:
Danielle Dixon, Esquire, Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549, Columbia, S.C. 29211

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Marie Assa'ad-Faltas, Applicant, v. State of South Carolina, Respondent.	Case No.: 2019-CP-40-2217 **ORDER OF DISMISSAL**

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Marie Assa'ad-Faltas (Applicant) on April 22, 2019. Respondent filed a return moving to dismiss this application pursuant to the statute of limitations. On November 16-17, 2022, an evidentiary hearing convened before the Honorable D. Craig Brown. Applicant was represented by Timothy L. Griffith, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Despite being notified by this Court on November 2, 2022, that she would be required to appear in-person at this hearing, Applicant failed to attend. In her absence, Mr. Griffith did not have any witnesses to call or any other evidence to present. Based on Applicant's failure to attend and submit any evidence or testimony to support the allegations in her application, I find she has failed to meet her burden of proof. Additionally, I find this action is barred by the statute of limitations. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

This PCR application arises from an order finding Applicant in contempt of court. On October 13, 2010, the City of Columbia Municipal Court issued an order limiting Applicant's contact with the Municipal Court and the City of Columbia's City Attorney's Office. On March 28, 2011, a Rule to Show Cause was issued against Applicant for violating the order. Applicant appeared *pro se*. After taking testimony, the Honorable Marian O. Hanna sentenced Applicant to

DCB 2.10.12

ten days in jail for one count of contempt of court and fifteen days in jail on a second count.[1]

On March 30, 2011, Applicant filed a *pro se* notice of appeal in the circuit court (2011-CP-40-2111). Thereafter, on April 8, 2011, the South Carolina Supreme Court issued an order prohibiting Applicant from filing *pro se* actions in South Carolina courts.[2] Applicant's appeal was set for a hearing on September 16, 2011, and Applicant appeared *pro se*. Due to the South Carolina Supreme Court's order prohibiting Applicant from proceeding *pro se*, the circuit court granted Applicant an additional thirty days to obtain counsel before ruling on her appeal. On November 1, 2011, the circuit court issued an order dismissing Applicant's appeal for failure to prosecute.

On December 1, 2011, Applicant attempted to file a notice of appeal in the South Carolina Supreme Court. The following day, the Clerk of the South Carolina Supreme Court notified Applicant by letter that her appeal had not been accepted due to the prohibitions of the Supreme Court's April 8, 2011 order.[3,4]

On July 11, 2013—more than twenty months after the circuit court dismissed her circuit court appeal and more than nineteen months after the South Carolina Supreme Court rejected her notice of appeal—Applicant filed a motion requesting appointment of counsel to perfect her appeal

---

[1] In her application, Applicant asserts she has served this time.

[2] Applicant appealed that order to the United States Supreme Court, which denied her petition for writ of certiorari on November 14, 2011.

[3] Applicant "resubmitted" her notice of appeal on January 3, 2014. By letter dated February 21, 2014, the Clerk notified Applicant that her resubmitted notice of appeal would not be accepted.

[4] On April 5, 2011, Applicant filed a petition for writ of habeas corpus in the United States District Court – District of South Carolina. The District Court denied the petition without prejudice due to Applicant's failure to exhaust state remedies, and the Fourth Circuit Court of Appeals dismissed Applicant's appeal of that denial on April 30, 2012. Assa'ad-Faltas v. City of Columbia, 472 Fed. Appx. 203 (2012). On August 6, 2012, Applicant filed a second petition for writ of habeas corpus in the Federal District Court challenging an October 2010 contempt proceeding; in her application, she avers that habeas petition is relevant to this proceeding. The District Court dismissed her second habeas petition without prejudice on September 11, 2012, and the Fourth Circuit declined to issue a certificate of appealability on June 6, 2013.

DCB 1.2012

of the circuit court's denial of relief. On November 8, 2017, the circuit court issued an order denying Applicant's motion for appointment of counsel. Applicant filed a motion for partial reconsideration on November 9, 2017; that motion was denied by Order dated December 23, 2020. Applicant appealed that order to the South Carolina Supreme Court (2021-000049); the appeal was dismissed on August 31, 2022, and the remittitur was sent October 13, 2022.

Current Application

Applicant filed the current application for PCR on April 22, 2019, alleging her conviction was obtained in violation of her constitutional rights and she continues to suffer the consequences of the conviction for the following reasons:

1. "Complete denial of jury trial"

   a. "SC's municipal courts are creatures of statute [that] limits their jurisdiction to petty criminal offenses. That very statute guarantees criminal defendants in SC's municipal courts the right to trial by jury no matter how petty the offense. I demanded trial by jury in writing before the City of Columbia's motion for a rule to show cause was heard against me. But CMC's Marion Oneida Hana [sic] ("Marion") denied me that right because she not [sic] educated at all on that said right exists. The entire 28 march 2011 hearing is dominated by Marion yelling uncontrollably and banging and literally hammering with her gavel but not letting me quote the law to her. Indeed, she actually said that she is holding me in contempt because I quoted the law to her or tried to."

2. "Complete denial of trial counsel"

   a. "I usually like to represent myself. But my prior experience with Marion left me convinced that she behaves very differently when under eyes from when able to isolate a person she wants to torture. I clearly demanded a lawyer as I am entitled to one even in contempt matters under Ex parte Jackson, 381 S.C. 253, 672 S.E.2d [sic] (SC App. [sic] 2009); but Marion refused to appoint one for me."

3. "Complete denial of appellate counsel"

   a. "When I appeared before Judge Barber on 16 September 2011, I advised him (and he so documented in 22 September 2011 ORDER) that I had contacted at least four private lawyers to represent me but they refused due to my inability to pay them. Judge Barber knew of my entitlement to state-

DCB 8.30.12

appointed appellate counsel but did not even offer me one. That prejudiced me because at the time, I was not allowed to advocate pro se at all but I had many meritorious appeal issues, all of which I had preserved at CMC (which has no civil jurisdiction) and in my appellate pleadings filed before I was denied self-representation. I could have won my appeal if heard on its merits."

4. "Per Robinson v. California, 370 U.S. 660, 667 (1962), criminalization of my legal and constitutionally-protected conduct violates the Eighth Amendment to the U.S. Constitution. The Eighth Amendment was made applicable to the states by the U.S. Supreme Court in Timbs v. Indiana, 586 U.S. ___ (decided 20 February 2019). This PCR is timely filed within one year of the Timbs decision per § 17-24-45(B), SC Code of Laws."

a. "Inability to stand (due to my severe knee pain) when Marion entered the courtroom is not a crime. Marion violated the Eighth Amendment by holding me in contempt for that and for my resistance to testifying against myself in violation of my Fifth Amendment rights. The 28 March 2011 and 6 April 2011 transcripts of proceedings in CMC, on file in 2011-CP-40-02111, graphically prove the State's (through CMC) violation of my constitutional rights. Complete CMC-made audio recordings of both court days are also available and prove that, [sic] on 28 March 2011, I was [sic] spoke politely and behaved properly throughout the whole hearing. I was not even allowed to be in the courtroom on 6 April 2011 even though I was in a holding cell in the courthouse building and had been transported there at great physical pain to me."

5. "After-discovered evidence of actual innocence. This PCR is timely filed within one year of the most recent discovery of evidence per § 17-24-25(B), SC Code of laws."

a. "Marion wrote and self-published a second so-called novel which more amply betrays her morbid hatred of all people, particularly females smarter and prettier than Marion, and her fantasies to shoot females and/or cause them to be 'locked up' in psychiatric hospitals. Marion offered to waive my fine if I submitted to psychiatric examination. Review of other transcripts and of her treatment of her own mother-in-law proves Marion's fixations and her true goal in holding me in contempt: to extort me to undergo psychiatric examination, solely to satisfy her morbid lusts, not because I did anything even remotely resembling contempt."

6. "Through no fault of mine, the transcript of 16 September 2011 hearing before SC Circuit Court Judge Barber was lost or destroyed. I have a constitutional right to said transcript under Chessman v. Teets, 350 U.S. 3 (1955)."

a. "In May-August 2016, I duly contacted SC Court Administration to obtain the transcript of the 16 September 2011 hearing, which must be kept for five

DCS 4/1/12
P.

> years; but I received in writing confirmation that the court reporter (Ms. L. Coconut Pantsari) who was assigned to that court that day cannot find her recording of the transcript of my hearing."

Before this Court are the filings of the current action, including the application, Respondent's return and motion to dismiss, Applicant's reply to Respondent's return and motion to dismiss, and Respondent's amended return and motion to dismiss; the transcript of the March 2011 contempt hearing before Judge Hanna; the records from the circuit court appeal (2011-CP-40-2111) and subsequent appeal to the Supreme Court of South Carolina (2021-000049); prior orders from the Supreme Court of South Carolina restricting Applicant's ability to proceed *pro se* (Order dated Sept. 20, 2019 in 2019-000036; Order dated Sept. 27, 2017 in 2013-0000862; Order dated Jan. 30, 2014 in 2013-000862; Order dated Apr. 8, 2011 in *The City of Columbia, Respondent, v. Marie Assa'ad-Faltas, MD. MPH, Appellant*); and prior orders from this Court regarding restrictions on Applicant's contact with the judicial branch and her ability to proceed *pro se* (*Order Restricting Applicant's Ability to Make Pro Se Filings and Directing the Richland County Clerk of Court to Refuse any Filings from Dr. Faltas Unless They are Filed on Her Behalf by Counsel of* Record, filed July 12, 2021; and *Global Order Re-emphasizing that Dr. Faltas is NOT to Communicate with Any Member of the Judicial Branch, Its Employee's or Staff, and Outlining Contempt Proceedings Should She Continue To Do So*, filed July 12, 2021).

The Evidentiary Hearing

Prior to the hearing, Applicant requested to attend via WebEx. Respondent objected, and this Court informed Applicant by email that she would be required to appear in person unless she provided additional information about her health condition. Thereafter, Applicant emailed the parties a graph of what appears to be a diagnostic test. See Court's Ex. 1. However, Applicant did not send any statement from a treating physician interpreting the graph or otherwise relaying

DCB 5/9/12

that Applicant could not attend the hearing due to health reasons. On November 2, 2022, the undersigned's law clerk emailed the following to Applicant's counsel: "Judge Brown has reviewed the document submitted by Dr. Faltas, however, without medical documentation stating that she is unable to physically attend, she will still be required to appear in person for her PCR hearings." See Court's Ex. 1. This Court did not receive any further documentation prior to this hearing related to Applicant's health. Thus, her request to appear via WebEx was denied.[5]

At the beginning of the hearing, counsel for Applicant relayed to the Court that Applicant did not intend to attend the hearing.[6] Respondent renewed its motion to dismiss based on the statute of limitations. Respondent also moved to dismiss the case based on Applicant's failure to appear and present evidence and testimony to support her allegations. For the reasons set forth below, this Court granted Respondent's motion to dismiss.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the proceedings from the municipal action and all related cases and appeals. After a careful review, this Court finds this Application shall be dismissed. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Statute of Limitations

This Court finds Applicant failed to comply with the filing procedures of the PCR Act.

---

[5] This Court also denied the State's request to have an out-of-state witness appear via WebEx.

[6] Applicant likewise did not attend her other PCR hearing scheduled for November 16, 2022 (2019-CP-40-112) or either of her PCR hearings scheduled for November 17, 2022 (2019-CP-40-2218, -2219). She did, however, attend the November 18, 2022 hearing in Austin Woods Apartments v. Marie Assa'ad-Faltas, MD, MPH (2018-CP-40-963), in which she was permitted to proceed pro se. The Undersigned, who was vested with exclusive jurisdiction of all these cases pursuant to a September 15, 2020 order issued by the Supreme Court of South Carolina, finds Applicant did not have an apparent health condition that prevented her from attending court on November 18, 2022.

S.C. Code Ann. § 17-27-10 to -160. Specifically, the Act requires:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The statute of limitations applies to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994).

Here, Applicant was held in contempt on March 28, 2011. Her appeal in the circuit court was denied on November 1, 2011, and her appeal in the South Carolina Supreme court was rejected on December 2, 2011. This application was therefore due to be filed on or before December 3, 2012. The application was instead filed on April 22, 2019 – more than six years beyond the statute of limitations.

In her application, Applicant attempted to excuse her lack of compliance with the statute of limitations by claiming the February 20, 2019 United States Supreme Court's (USSC) decision in Timbs v. Indiana[7] gave rise to a new ground pursuant to the Eighth Amendment. Applicant argues that because she filed this application within one year of that decision, she has complied with the statute of limitations. However, Timbs is inapplicable to Applicant's case. Further, Timbs did not announce a new rule of law and is therefore not retroactive. Accordingly, Applicant cannot rely on Timbs to excuse her failure to comply with the statute of limitations.

[7] 586 U.S. ___, 139 S.Ct. 682 (2019).

DCA 7/9/12

In Timbs, the defendant pled guilty in Indiana state court to drug charges and conspiracy to commit theft. At the time of his arrest, law enforcement seized Timbs's Land Rover valued at $42,000. After his conviction, the State of Indiana commenced a forfeiture action for the Land Rover. The trial court denied Indiana's demand, finding it violated the Eighth Amendment's Excessive Fines Clause because the Land Rover's $42,000 value was grossly disproportionate to the maximum fine imposed for Timbs's conviction—$10,000. The Indiana Supreme Court reversed, holding the Eighth Amendment applied only to federal action, not state action.

The USSC reversed the Indiana high court's decision, holding the Eighth Amendment was incorporated to the states through the Due Process Clause. In doing so, the USSC laid out the long history of protection against excessive fines, both federally and by the individual states. The Timbs decision did not announce a new rule or change the law; it was issued simply to clarify the long-existing interpretation and was necessary only because the Indiana Supreme Court's decision was clearly erroneous. Additionally, in this case, Applicant was not even fined—she was sentenced to a total of twenty-five days in jail for contempt, which on its face is not excessive or cruel. The amount at issue in Timbs was four times more than the maximum imposed by the relevant statute, and it was a civil forfeiture pursued in addition to a criminal penalty. Thus, Applicant's case and Timbs are easily distinguishable. Regardless, because Timbs did not announce a new substantive rule of law, it is not applicable to collateral actions retroactively. See Montgomery v. Louisiana, 577 U.S. 190 (2016) (holding state collateral review courts must give retroactive effect only when a decision announces a new substantive rule of constitutional law).

Finally, regardless of the applicability of Timbs, the South Carolina Constitution contains an identical prohibition, stating "[e]xcessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted. . . ." S.C. Const. Art.

DCB 8/12

1, § 15. This clause has been in effect since at least 1970 and was in effect at the time of Applicant's contempt conviction. Thus, Applicant could have raised an excessive-fines argument within one year of the denial of her attempted appeal. This Court thus finds Timbs does not offer a valid basis for tolling the statute of limitations.

At the hearing, counsel for Applicant asserted the statute of limitations should be tolled because (1) the circuit court appeal was delayed due to the magistrate's refusal to deliver a return, (2) Applicant "was denied the opportunity to file herself," and (3) the State "caused a lot of the delay because in one . . . instance, they waited four years before hearing the case." This Court finds these contentions lack merit. To the extent Applicant contends the delay was caused by the magistrate not timely delivering a return, this Court finds the triggering start date for the statute of limitations did not occur until *after* the circuit court dismissed Applicant's appeal. Any delay prior to that time is not relevant because that time is not included in the statute of limitations.

Regarding Applicant's argument that she was prevented from filing a PCR application, this Court acknowledges the South Carolina Supreme Court has issued various orders restricting Applicant's ability to proceed *pro se*. However, those orders did not prohibit her from filing a PCR application *pro se*. In fact, this application was filed by Applicant *pro se*.[8] Applicant has not set forth a valid reason she was prohibited from filing this PCR application, and she cannot in good faith argue that she was prohibited from filing it *pro se* when she did in fact file it *pro se*. Finally, this Court finds Applicant has not submitted any evidence showing the State caused the delay in Applicant's filing of this PCR application in April 2019 after the circuit court dismissed her case in November 2011 and the South Carolina Supreme Court rejected her appeal in December 2011.

[8] Further, as recent as 2018, Applicant argued in this Court that the orders restricting her ability to proceed *pro se* did not apply to PCR actions. That very issue was clarified by the South Carolina Supreme Court on September 20, 2019—*after* Applicant filed this PCR application.

DCB p. 9 of 12

Because Applicant has not offered any valid reason for her failure to comply with the statute of limitations, this application is barred by the statute of limitations.[9]

Ineffective Assistance of Counsel

In a PCR action, **an applicant bears the burden of proving the allegations**. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice due to counsel's deficient performance. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625.

---

[9] This Court finds Applicant's claim of after-discovered evidence—based on a book purportedly written by Judge Hanna—does not set forth a prima facie claim for after-discovered evidence; thus, it is summarily dismissed. See Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (providing a defendant requesting a new trial based on after-discovered evidence must show the evidence (1) is such as would probably change the result if a new trial was held; (2) has been discovered since the trial; (3) could not, by the exercise of due diligence, have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching).

DCB 8.10.12

Applicant did not present any evidence or testimony to support her PCR allegations. Applicant was informed that she would be required to attend in-person well in advance of the hearing and never offered documentation form a treating physician of her inability to attend. This Court finds Applicant failed to establish good cause for her failure to attend. In Applicant's absence, counsel for Applicant did not have a witness to testify and present evidence to support the allegations in the PCR application. Thus, Applicant failed to meet her burden of proof, and this Application is denied and dismissed with prejudice.

[Conclusion and Signature Page Follows]

DCB
p. 11/7/12

Conclusion

Based on the foregoing, this Court finds and concludes this application is barred by the statute of limitations. This Court further finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, she must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. An applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g). Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED that his application for PCR is denied and dismissed with prejudice.

AND IT IS SO ORDERED THIS 1st **day of** February**, 2023.**

D. CRAIG BROWN
Presiding Judge
Fifth Judicial Circuit

Florence, South Carolina

DCB
p. 12 7/12